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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

10/808,724

Applicant(s)

MCPHERSON ET AL.

Examiner

RAJ JAIN

Art Unit

2472

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 37-42, 43-48, 49-54, 55 and 56 is provisionally rejected on the ground of nonstatutory double patenting over claims 1-5, 6-10, 11-16 also 18-23 and 32 and 43 respectively against patented case 6,751,198.

This is a provisional double patenting rejection since the conflicting claims of the present applicant has not yet been patented. Both, the subject application and the patented case have claim languages that are phrased differently to claim the same subject matter, thus they are not patentably distinct from each other.

The subject matter claimed in the instant application is fully disclosed in the patented case referenced and would be covered by any patent granted on the instant application since the referenced patented case and the instant application are claiming common subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson et al (USP 4,322,793) in view of Hanson et al (USP 5633861 A).

Regarding claims 37, 43, 49, and 55 Andersson discloses a network device (Fig. 1, a communications controller with network devices) for use in a network transmitting packets the device comprising:

a timer (col 5 lines 60-col 6 line 60);

a processor operable for setting a transmit bit in an outgoing packet and starting the timer when the transmit bit is set (see Fig 1 and 2; col 13 lines 29-45; start/stop operations are performed based on transmit and receive bits within a byte); and for reading a receive bit in a received packet and stopping the timer when the receive bit is read (again see Fig 1 and 2; col 13 lines 29-45; stop bit in the received byte is read to stop the timer accordingly).

Andersson fails to disclose monitoring a delay time of the network.

Hanson discloses monitoring a delay time of the network (Figs. 1 & 5; col 6 lines 44-48; col 7 lines 30-48).

Monitoring and allocation of network resources within packet-based communications network having an initial packet submission rate which is selected to limit delays incurred by bursts in traffic while also minimizing congestion at convergence points of the network provides optimum usage of network resources.

Thus it would have been obvious at the time the invention was made to incorporate the teachings of Hanson within Andersson so as to enhance overall network performance by monitoring and allocating network resources based on usage and delay as appropriate.

Regarding claims 38, 44, and 50 Andresson discloses an interface coupled to the processor, the interface operable for coupling the network device to the network and for transmitting the outgoing packet (Figs. 1, CCA interface is coupled to the processor 1).

Regarding claim(s) 39, 45 and 56, Andresson discloses setting a another receive bit in another outgoing packet (col 13 lines 48-col 14 line 5; table 3 lines 45-55, next frame consists of the next bit setting protocol).

Regarding claims 40, 46 and 57, Andresson fails discloses a transmitting means for a voice packet.

Hanson discloses voice packet transmission (Fig. 1, col 1 lines 40-45; col 4 lines 18-33). Reasons for combining same as for independent claims.

Regarding claim 51 Andresson discloses interface is operable for receiving a second voice packet, and the processor is operable for checking the second voice packet to determine if a receive bit is set and stopping the timer if the receive bit is set (again, see Fig 1 and 2; col 13 lines 29-45; stop bit in the received byte is read to stop the timer accordingly, for each successive packet or byte received having a stop bit).

Regarding claims 41, 47, and 52, Andresson discloses a round trip register operable for receiving a value from the timer (abstract, col 3 lines 14-28).

Regarding claims 42, 48, 53 and 58, Andresson fails to disclose comparing the value in the round trip data register to a predetermined value and sending an indication to a user when the value in the round trip data register is greater than the predetermined value.

Hanson discloses comparing the value in the round trip data register to a predetermined value and sending an indication to a user when the value in the round trip data register is greater than the predetermined value (col 10 lines 36-54). Further Hanson discloses voice packet transmission (Fig. 1, col 1 lines 40-45; col 4 lines 18-33).

In order to properly monitor the end-to-end delay of a network and congestion status, the delay is measured against threshold values. Thus it would have been obvious at the time the invention was made to incorporate the teachings of Hanson within Andresson so as to properly monitor a network for congestion and/or delays.

Regarding claim(s) 54, Andersson fails to disclose a transmitting means for a subsequent voice packet after the first voice packet.

Hanson discloses voice packet transmission (Fig. 1, col 1 lines 40-45; col 4 lines 18-33). The sequence of second and third voice packets would inherently follow the sequence after the first voice packet transmission and acknowledgement reception for timing delay and therefore while not explicitly disclosed however would be inherent to one of ordinary skill in the art that a second and third voice packet transmission would be apparently follow after the first voice packet transmission. Reasons for combining same as for independent claims.

Response to Arguments

Applicant's arguments filed October 19, 2009 have been fully considered but they are not persuasive.

With respect to **Double Patenting Rejection** of claim(s) 37-56, once again, the Examiner will maintain the subject rejection on the records until the issue has been resolved appropriately.

With respect to **35 USC § 103** rejection of claim(s) 37-58, Applicant contends Andersson fails to disclose or describe "(1) setting a transmit bit in an outgoing packet and starting a timer when the transmit bit is set, or (2) reading a receive bit in a received packet and stopping the timer when the receive bit is read. Nor does Hanson, or any other art of record, alone or in combination, teach or suggest these features."

Examiner respectfully disagrees, Andersson explicitly discloses a network device (Fig. 1) with a communications controller and a timer (col 5 lines 60-col 6 line 60). Andersson discloses start/stop timing bit in reference with ICA Start/Stop Line Control Facility (col 13 lines 29-45), lines 37-42 explicitly recite here in part;

"data communications equipment (DCE) and sense DCE conditions, establish transmit and receive bit timing, perform interval timer functions in accordance with the ICC, append Start and Stop

bits onto transmitted bytes, test each received byte for a valid Stop bit and for odd parity, remove Start and Stop bits from each"

Applicant contends that "this portion merely discloses that for start/stop operations, the CCAs establish transmit and receive bit timing, perform interval timer functions in accordance with ICC, append start and stop bits onto transmitted bytes...".

Examiner fails to understand what is meant by "merely", it is apparent from the cited portion above that a "bit" to indicate Start/Stop cycles of a transmitted packets (bytes) is incorporated in DCE for asynchronous line control. Examiner asserts that while the inclusion of a start/stop bit disclosed in Anderson has a different application than that intended by Applicant, this in itself does not preclude the fact that the same inventive concept can easily be applied to networks as is the case with the Applicants invention without deviating from the scope of the invention.

Further Applicant contends "Andersson merely describes that the CCA "perform[s] interval timer functions in accordance with ICC" or "test[s] each received byte for a valid Stop bit." Moreover, the reference in Andersson to "establish bit transmit and receive bit timing" and "append Start and Stop bits onto transmitted byte, s" appear to refer to establishing bit timing for bits since the link to the CCA is an asynchronous line. Andersson, Col. 13, lines 29-35. In addition, it appears that the "Start/Stop operations" are identifying starting and stopping points for each transmitted byte and/or for starting and stopping the CCA's data communications.² Andersson, Col. 13, lines 27 through Col. 16."

This contention is moot since again Examiner asserts the inventive concept of including a Start/Stop bit is generic in nature and can be easily adapted to any packet switching system that requires such functionality for its invention without deviating from the scope of the invention, which is clearly the case in Anderson. While Anderson discloses use of a start/stop bit function within a communications controller, Applicant discloses the same however within a network which in essence is also within a communications controller for the same purpose as discussed in Anderson.

Further with respect to claim 43, Applicant contends Anderson fails to disclose a state machine.

Examiner respectfully disagrees, while a state machine is not explicit, however Examiner asserts the use of a state machine for the functionality of transmitting/receiving a start/stop bits as appropriate.

Thus based on the foregoing, Examiner asserts the combination of Andersson et al (USP 4,322,793) in view of Hanson et al (USP 5633861 A) does disclose the limitations of claims 37-58 and therefore the rejection to claims 37-58 is sustained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RAJ JAIN** whose telephone number is (571)272-3145. The examiner can normally be reached on **M-TH**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raj K. Jain/

Examiner, Art Unit 2472